

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 13 June 2019

CASE NO.: 2019-TNE-00017

In the Matter of:

**ADMINISTRATOR, WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR,**
Prosecuting Party,

v.

NASWA MOTOR INN, INC.,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT

This proceeding arises from the Secretary of Labor's enforcement of Temporary Non-agricultural Visa ("H-2B") provisions of the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.* (the "Act"), as amended, and the implementing regulations set forth at 20 C.F.R. Part 655, and 29 C.F.R. Part 503.

On January 28, 2019, the Administrator of the Wage and Hour Division, United States Department of Labor, issued a determination letter identifying Respondent's alleged violation of the H-2B provisions of the Act. On February 21, 2019, Respondent submitted a timely request for a hearing challenging the Administrator's determination. On April 11, 2019, the parties filed a Settlement Agreement and Consent Findings ("Agreement"). Upon review of the Agreement and the nature of the case, I find the terms to be fair and reasonable and in substantial compliance with 20 C.F.R. § 18.71 and 29 C.F.R. § 503.43(b). I find the amount of the assessed penalty in the settlement to be adequate and that the settlement was not procured under duress or coercion. Therefore, I approve the Agreement and proposed settlement. The Agreement is hereby incorporated into this decision.

In accordance with the terms of the Agreement, it is hereby **ORDERED**:

1. On or before July 10, 2019, Respondent shall pay \$64,449.92 in gross back wages owed to H-2B employees as set forth in Exhibit A (attached to the Agreement). Back wages shall be paid, less lawful required deductions, to each employee named in Exhibit A, in accordance with the amounts indicated next to each employee's name in Exhibit A. Such payments shall be in the form of a payroll check with Case Number 1823963 written on the face of the check, and shall be

made payable to “[each employee’s name].” Respondent agrees to deliver the aforementioned checks to the U.S. Department of Labor, Wage and Hour Division, Northern New England District Office, 1155 Elm Street, Suite 501, Manchester 03101;

2. On or before July 10, 2019, Respondent shall provide the Administrator with a statement showing the following: the Respondent’s Federal ID number, the name of each employee listed in Exhibit A, the employee’s last known address and social security number, the amount of back wages due the employee as indicated in Exhibit A, and the amount of back wages each employee shall receive. All such statements should be sent to the U.S. Department of Labor, Wage and Hour Division, 1155 Elm Street, Suite 501, Manchester, NH 03101, Attn. Daniel Cronin, District Director (“Northern New England District Office”), or by electronic transmission to Daniel Cronin at the Northern New England District Office;
3. The total civil money penalties relating to this case are reduced to \$60,550.08;
4. On or before July 10, 2019, Respondent agrees to deliver the civil money penalties to the Wage and Hour Division to the address above in the form of a certified bank check or money order payable to “Wage and Hour Division- United States Department of Labor,” with Case Number 1823963 written on the face of the bank check/money order, or to pay online by ACH transfer, credit card, debit card, or digital wallet at <https://pay.gov/public/form/start/77734139> and forwarding payment confirmation to U.S. Department of Labor, Wage and Hour Division, Northern New England District Office, 1155 Elm Street, Suite 501, Manchester, NH 03101;
5. Respondent agrees to comply in all respects with the Act and applicable regulations in the future. Respondent specifically agrees that it will comply with its wage obligations as agreed and attested to in all of its Applications for Temporary Employment Certification;
6. Respondent shall not, under any circumstances, accept and keep any amount that was paid and accepted by an employee owed back wages under these Consent Findings and subsequently returned to the Respondent. Any such amount shall be immediately paid to the Administrator in the manner described in Paragraph 4 above, with the Case Number 1823963 written on the face of each such payment, and the Respondent shall have no further obligation with respect to such returned monies;
7. Jurisdiction, including the authority to issue any orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings, is retained by the United States Department of Labor, Office of Administrative Law Judges;

8. The entire record upon which this Order is based shall consist of the Administrator's determination letter and attachments thereto and this Agreement;
9. The parties waive any further procedural steps before the Administrative Law Judge and waive any right to challenge or contest the validity of these Consent Findings and this Order;
10. These Consent Findings shall fully and finally resolve all outstanding issues between the parties that were raised in connection with the Administrator's determination letter of January 28, 2019;
11. These Consent Findings and this Order shall have the same force and effect as an order made after a full hearing;
12. Each party shall bear its own costs, attorney's fees and other expenses incurred by such party in connection with any stage of this proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended;
13. Nothing in these Consent Findings is binding on any governmental agency other than the United States Department of Labor Wage and Hour Division; and
14. The Order issued in accordance with this Agreement shall constitute the Final Administrative Order in this case.

SO ORDERED.

JERRY R. DeMAIO
Administrative Law Judge

Boston, Massachusetts